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Supreme Court, U.S.
FILED

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No.

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IN THE

Supreme Court of the United States

YONA BOYD AND BRENDA COLLIER,
Petitioners,

v.

DONALD BRUCE, M.D. and
D&C PROPERTY MANAGEMENT CORP.,
Respondents.

On Petition for
Writ of Certiorari to the
Tennessee Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Tennessee state judiciary – a branch of state government – denied Petitioners' First Amendment right to government redress of grievances by giving claim-preclusive effect to a non-merit procedural order?

Whether the Tennessee state judiciary denied Petitioners' federal pension rights under ERISA by giving claim-preclusive effect to a non-merit state procedural order?

Whether the Tennessee state judiciary denied Petitioners' federal substantive due process by denying a hearing on the merits upon Petitioners' re-filing their claim under Tennessee Code Annotated 28-1-105(a)?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page. D&C Property Management Corp. is a corporation wholly owned by Donald Bruce, M.D.

REFERENCE OF COURT OPINIONS

The order of the Tennessee Supreme Court denying permission to appeal appears at **Appendix A** and is unpublished.

The order of the Tennessee Court of Appeals denying a rehearing appears at **Appendix B** and is unpublished.

The opinion of the Tennessee Court of Appeals appears at **Appendix C** and is unpublished.

The state-court briefs wherein federal issues are raised appears at **Appendix D.**

Tennessee's re-filing statute T.C.A. 28-1-105(a) appears at **Appendix E**.

The trial court orders appear as **Appendix F**.

JURISDICTIONAL GROUNDS

Entry of Judgment/Rehearing

The Tennessee Supreme Court denied an appeal to Petitioners on February 11, 2002. No petition for rehearing was filed because the Tennessee Supreme Court did not disturb the opinion of the Tennessee Court of Appeals. The All Writ Act and 28 U.S.C. 1254 confer jurisdiction upon this Court to correct any denial of federal constitutional rights to Petitioners.

Constitutional and Statutory Provisions

The First Amendment to the u.s. Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the people peaceably to assemble, and to petition the government for a redress of grievances."

The pension and vacation pay benefits sued for would also provide a basis for a cause of action under

ERISA. 29 U.S.C. 1132(a)(1)(B); 29 U.S.C. 1002(1). State courts have jurisdiction to order employers to pay such pension and vacation pay benefits to employees concurrent with federal courts. 29 U.S.C. 1132(e)(1). But, in cases involving an employment contract such as the instant case, a federal court would necessarily rely on state common law. *Adcock v. Firestone Tire & Ruber Co.*, 616 F.Supp. 409, 414, 416, 417-418 (M.D. Tenn. 1985), *rev'd in part on others grounds*, 822 F.2d 623 (6th Cir. 1986). Therefore, the instant suit in state court was identical in law and fact to a suit which could have been brought in federal district court solely for the pension and vacation pay benefit portion of the initial case.

Concise Statement of Case

In the trial-court decisions, Petitioners sued the correct party - their former employer Donald Bruce, M.D. – for unpaid pension and other benefits totaling over $30,000. In a preliminary procedural order concerning the proper party, the first trial court ruled that Dr. Bruce was really not their employer and named a payroll-processing company Prime Focus, Inc. as the employer. In compliance with the court's decision, Petitioners sued Prime Focus. The court then ruled that Prime Focus was not the actual employer, and that Bruce was the correct party to sue after all. In compliance with the statute Tennessee Code Annotated 28-1-105(a), appellants re-sued Dr. Bruce – whom they had sued in the first place. But the trial court said that its first decision was *res judicata*, and barred a decision on the merits of the case, despite the clear language of the 144-year-old statute establishing petitioners'' statutory right to re-file a case.

The federal question of ERISA was raised by Respondents at the trial court stating that the case should be heard in federal court. Petitioners addressed this question at the trial court and the appeals court that both federal and state courts have ERISA jurisdiction per 29 U.S.C. 1132(e)(1). The federal question of Petitioner's re-filing rights (T.C.A. 28-1-105(a)) was raised in oral argument on a motion for

summary judgment at the trial court, within a petition for rehearing per the appellate rules of Tennessee, *Hathorn v. Lovorn*, 457 U.S. 255, 262-265, 102 S.Ct. 2421, 2426-2428, 72 L.Ed 824 (1982), and within the appellate brief to the Tennessee Supreme Court (Appendix D).

All Tennessee state courts remained silent on the federal issues in the instant case.

Consideration for Writ of Certiorari

The Tennessee Supreme Court, as the court of last resort of Tennessee, failed to ensure that the courts of the state granted hearings to litigants on the merits of a case based on the state's own statute Tennessee Code Annotated 28-1-105(a), *Adams v. Carter County Memorial Hosp.*, 548 S.W.2d 307, 308, 309, 310 (Tenn. 1977); *see also W.R. Grace & Co. v. Taylor*, 398 S.W.2d 81, 83 (Tenn. Ct. App. 1965), and thus denied First and Fifth Amendment due process to Petitioner. *See Love v. Bolinger*, 927 F.Supp. 1131, 1138 (S.D. Ind. 1996); *Monsky v. Moraghan*, 127 F.3d 243, 247 (2nd Cir. 1997). This Court must prevent the fundamental doctrine of *res judicata* from being used by state courts as a cover to falsely label decisions as "on the merits" when such decisions should actually have no claim-preclusive effect; which state court actions directly conflict with decisions of the Supreme Court of the United States. *E.g. Semtek Int'l v. Lockheed Martin Corp.*, ____ U.S. ____ (2001), (Scalia, J., op.); *see also South Central Bell Tel. Co. v. Alabama*, 526 U.S. 160, 167, 119 S.Ct. 1180, 1185, 143 L.Ed.2d 258 (1999); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428-429, 102 S.Ct. 1148, 1154, 71 L.Ed.2d 265 (1982).

CONCLUSION

Based on the foregoing, Petitioners respectfully request that their petition for writ of certiorari be granted.

Respectfully submitted:

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